



General Assembly

January Session, 2011

Raised Bill No. 1221

LCO No. 5024

05024_____JUD

Referred to Committee on Judiciary

Introduced by:
(JUD)

***AN ACT CONCERNING PATERNITY AND CHILD SUPPORT
OBLIGATIONS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 46b-172a of the general statutes is repealed and
2 the following is substituted in lieu thereof (*Effective October 1, 2011*):

3 (a) Any person claiming to be the father of a child born out of
4 wedlock may at any time, but no later than sixty days after the date of
5 notice under section 45a-716, file a claim for paternity with the court of
6 probate for the district in which either the mother or the child resides,
7 on forms provided by such court. The claim shall contain the
8 claimant's name and address, the name and last-known address of the
9 mother and the month and year of the birth or expected birth of the
10 child. Not later than five days after the filing of a claim for paternity,
11 the judge of the court of probate shall cause a certified copy of such
12 claim to be served upon the mother or prospective mother of such
13 child by personal service or service at her usual place of abode, and to
14 the Attorney General by first class mail. The Attorney General may file
15 an appearance and shall be and remain a party to the action if the child
16 is receiving or has received aid or care from the state, or if the child is

17 receiving child support enforcement services, as defined in subdivision
18 (2) of subsection (b) of section 46b-231. The claim for paternity shall be
19 admissible in any action for paternity under section 46b-160. [, and
20 shall estop the claimant from denying his paternity of such child and
21 shall contain language that he acknowledges liability for contribution
22 to the support and education of the child after its birth and for
23 contribution to the pregnancy-related medical expenses of the mother]
24 By filing a claim under this section, the putative father submits to the
25 jurisdiction of the court of probate.

26 (b) If a claim for paternity is filed by the father of any minor child
27 born out of wedlock, the court of probate shall schedule a hearing on
28 such claim, send notice of the hearing to all parties involved and
29 proceed accordingly.

30 (c) In such proceeding, unless the issue of paternity has been
31 determined in a court of competent jurisdiction, the Probate Court,
32 upon motion of any party or on its own motion, may order genetic
33 tests which shall mean deoxyribonucleic acid tests, to be performed by
34 a hospital, accredited laboratory, qualified physician or other qualified
35 person designated by the court, to determine whether or not the
36 putative father is the father of the child, provided the court finds
37 evidence that sexual intercourse occurred between the mother and
38 putative father during the period of time in which the child was
39 conceived. The results of such tests, whether ordered under this
40 section or required by the IV-D agency under section 46b-168a, shall be
41 admissible in evidence to either establish definite exclusion of the
42 putative father or as evidence that he is the father of the child without
43 the need for foundation testimony or other proof of authenticity or
44 accuracy, unless objection is made in writing not later than twenty
45 days prior to the hearing at which such results may be introduced in
46 evidence.

47 [(c)] (d) The child shall be made a party to the action. Said child
48 shall be represented by a guardian ad litem appointed by the court in

49 accordance with section 45a-708. Payment shall be made in accordance
50 with such section from funds appropriated to the Judicial Department,
51 however, if funds have not been included in the budget of the Judicial
52 Department for such purposes, such payment shall be made from the
53 Probate Court Administration Fund.

54 [(d)] (e) In the event that the mother or the claimant father is a
55 minor, the court shall appoint a guardian ad litem to represent him or
56 her in accordance with the provisions of section 45a-708. Payment shall
57 be made in accordance with said section from funds appropriated to
58 the Judicial Department, however, if funds have not been included in
59 the budget of the Judicial Department for such purposes, such
60 payment shall be made from the Probate Court Administration Fund.

61 [(e)] (f) Upon the motion of the putative father, the mother, or his or
62 her counsel, or the judge of probate having jurisdiction over such
63 application, filed not later than three days prior to any hearing
64 scheduled on such claim, the Probate Court Administrator shall
65 appoint a three-judge court from among the several judges of probate
66 to hear such claim. Such three-judge court shall consist of at least one
67 judge who is an attorney-at-law admitted to practice in this state. The
68 judge of the court of probate having jurisdiction over such application
69 under the provisions of this section shall be a member, provided such
70 judge may disqualify himself or herself in which case all three
71 members of such court shall be appointed by the Probate Court
72 Administrator. Such three-judge court when convened shall have all
73 the powers and duties set forth under sections 17a-75 to 17a-83,
74 inclusive, 17a-450 to 17a-484, inclusive, 17a-495 to 17a-528, inclusive,
75 17a-540 to 17a-550, inclusive, 17a-560 to 17a-576, inclusive, and 17a-615
76 to 17a-618, inclusive, and shall be subject to all of the provisions of law
77 as if it were a single-judge court. The judges of such court shall
78 designate a chief judge from among their members. All records for any
79 case before the three-judge court shall be maintained in the court of
80 probate having jurisdiction over the matter as if the three-judge court
81 had not been appointed.

82 [(f) By filing a claim under this section, the putative father submits
83 to the jurisdiction of the court of probate.]

84 (g) Once alleged parental rights of the father have been adjudicated
85 in his favor under subsection (b) of this section, or acknowledged as
86 provided for under section 46b-172, his rights and responsibilities shall
87 be equivalent to those of the mother, including those rights defined
88 under section 45a-606. Thereafter, disputes involving custody,
89 visitation or support shall be transferred to the Superior Court under
90 chapter 815j, except that the probate court (1) may enter a temporary
91 order for custody, visitation or support until an order is entered by the
92 Superior Court, and (2) may not enter a temporary order for past-due
93 support under subdivision (1) of this subsection if the court finds,
94 upon motion of the father or upon its own motion, that such support
95 accrued while the mother of the child wilfully prevented the father
96 from learning of the birth of the child or seeing the child, unless the
97 probate court finds that the mother of the child was protected by a
98 protective order, restraining order or standing criminal protective
99 order with respect to the father during such period.

100 (h) Failing perfection of parental rights as prescribed by this section,
101 any person claiming to be the father of a child born out of wedlock (1)
102 who has not been adjudicated the father of such child by a court of
103 competent jurisdiction, or (2) who has not acknowledged in writing
104 that he is the father of such child, or (3) who has not contributed
105 regularly to the support of such child, or (4) whose name does not
106 appear on the birth certificate shall cease to be a legal party in interest
107 in any proceeding concerning the custody or welfare of the child,
108 including but not limited to guardianship and adoption, unless he has
109 shown a reasonable degree of interest, concern or responsibility for the
110 child's welfare.

111 (i) Notwithstanding the provisions of this section, after the death of
112 the father of a child born out of wedlock, a party deemed by the court
113 to have a sufficient interest may file a claim for paternity on behalf of

114 such father with the probate court for the district in which either the
115 putative father resided or the party filing the claim resides. If a claim
116 for paternity is filed pursuant to this subsection, the court of probate
117 shall schedule a hearing on such claim, send notice of the hearing to all
118 parties involved and proceed accordingly.

119 Sec. 2. Section 17b-179b of the general statutes is repealed and the
120 following is substituted in lieu thereof (*Effective October 1, 2011*):

121 The Commissioner of Social Services shall establish an arrearage
122 adjustment program in which the past due support owed by any
123 obligor assigned and payable to the state acting by and through the IV-
124 D agency may be adjusted. The commissioner, in deciding whether to
125 adjust any arrearage of an obligor, shall consider among other factors,
126 the likelihood of compliance with support obligations, the
127 noncustodial parent's involvement in the life of any such child, [and]
128 any other contribution of the noncustodial parent to the emotional
129 well-being of any such child, and any finding by the probate court
130 pursuant to subsection (g) of section 46b-172a, as amended by this act,
131 that the mother of the child wilfully prevented an obligor from
132 learning of the birth of the child or seeing the child, unless the probate
133 court finds that the mother of the child was protected by a protective
134 order, restraining order or standing criminal protective order with
135 respect to the obligor during such period.

136 Sec. 3. Subdivision (5) of subsection (a) of section 17b-745 of the
137 general statutes is repealed and the following is substituted in lieu
138 thereof (*Effective October 1, 2011*):

139 (5) (A) The court or family support magistrate may also make and
140 enforce orders for the payment by any person named herein of past-
141 due support for which any such person is liable in accordance with the
142 provisions of subsection (b) of section 17b-179, or section 17a-90,
143 17b-81, 17b-223, 46b-129 or 46b-130 or, in IV-D cases, and order such
144 person, provided such person is not incapacitated, to participate in
145 work activities that may include, but shall not be limited to, job search,

146 training, work experience and participation in the job training and
147 retraining program established by the Labor Commissioner pursuant
148 to section 31-3t. The father's liability for past-due support of a child
149 born out of wedlock shall be limited to the three years next preceding
150 the filing of a petition pursuant to this section. The court or family
151 support magistrate may limit the father's liability for past-due support
152 of a child born out of wedlock if the court or family support magistrate
153 finds that such support accrued while the mother of the child wilfully
154 prevented the father from learning of the birth of the child or seeing
155 the child, unless the court or family support magistrate finds that the
156 mother of the child was protected by a protective order, restraining
157 order or standing criminal protective order with respect to the father
158 during such period.

159 (B) In the determination of child support due based on neglect or
160 refusal to furnish support prior to the action, the support due for
161 periods of time prior to the action shall be based upon the obligor's
162 ability to pay during such prior periods, as determined in accordance
163 with the child support guidelines established pursuant to section 46b-
164 215a. The state shall disclose to the court any information in its
165 possession concerning current and past ability to pay. If no
166 information is available to the court concerning past ability to pay, the
167 court may determine the support due for periods of time prior to the
168 action as if past ability to pay is equal to current ability to pay, if
169 current ability is known. If current ability to pay is not known, the
170 court shall determine the past ability to pay based on the obligor's
171 work history if known, or if not known, on the state minimum wage
172 that was in effect during such periods, provided only actual earnings
173 shall be used to determine ability to pay for past periods during which
174 the obligor was a full-time high school student or was incarcerated,
175 institutionalized or incapacitated.

176 (C) Any finding of support due for periods of time prior to an action
177 in which the obligor failed to appear shall be entered subject to
178 adjustment. Such adjustment may be made upon motion of any party,

179 and the state in IV-D cases shall make such motion if it obtains
 180 information that would have substantially affected the court's
 181 determination of past ability to pay if such information had been
 182 available to the court. Motion for adjustment under this subparagraph
 183 may be made not later than twelve months from the date upon which
 184 the obligor receives notification of (i) the amount of such finding of
 185 support due for periods of time prior to the action, and (ii) the right
 186 not later than twelve months from the date of receipt of such
 187 notification to present evidence as to such obligor's past ability to pay
 188 support for such periods of time prior to the action. A copy of any
 189 support order entered, subject to adjustment, that is provided to each
 190 party under subsection (c) of this section shall state in plain language
 191 the basis for the court's determination of past support, the right to
 192 request an adjustment and to present information concerning the
 193 obligor's past ability to pay, and the consequences of a failure to
 194 request such adjustment.

195 Sec. 4. Subdivision (7) of subsection (a) of section 46b-215 of the
 196 general statutes is repealed and the following is substituted in lieu
 197 thereof (*Effective October 1, 2011*):

198 (7) (A) The court or family support magistrate may also determine,
 199 order and enforce payment of any support due because of neglect or
 200 refusal to furnish support prior to the action. In the case of a child born
 201 out of wedlock whose parents have not intermarried, the father's
 202 liability for such support shall be limited to the three years next
 203 preceding the filing of a petition pursuant to this section. The court or
 204 family support magistrate may limit the father's liability for past-due
 205 support of a child born out of wedlock if the court or family support
 206 magistrate finds that such support accrued while the mother of the
 207 child wilfully prevented the father from learning of the birth of the
 208 child or seeing the child, unless the court or family support magistrate
 209 finds that the mother of the child was protected by a protective order,
 210 restraining order or standing criminal protective order with respect to
 211 the father during such period.

212 (B) In the determination of support due based on neglect or refusal
213 to furnish support prior to the action, the support due for periods of
214 time prior to the action shall be based upon the obligor's ability to pay
215 during such prior periods, as determined in accordance with the child
216 support guidelines established pursuant to section 46b-215a. The state
217 shall disclose to the court any information in its possession concerning
218 current and past ability to pay. If no information is available to the
219 court concerning past ability to pay, the court may determine the
220 support due for periods of time prior to the action as if past ability to
221 pay is equal to current ability to pay, if current ability is known. If
222 current ability to pay is not known, the court shall determine the past
223 ability to pay based on the obligor's work history, if known, or if not
224 known, on the state minimum wage that was in effect during such
225 periods, provided only actual earnings shall be used to determine
226 ability to pay for past periods during which the obligor was a full-time
227 high school student or was incarcerated, institutionalized or
228 incapacitated.

229 (C) Any finding of support due for periods of time prior to an action
230 in which the obligor failed to appear shall be entered subject to
231 adjustment. Such adjustment may be made upon motion of any party,
232 and the state in IV-D cases shall make such motion if it obtains
233 information that would have substantially affected the court's
234 determination of past ability to pay if such information had been
235 available to the court. Motion for adjustment under this subparagraph
236 may be made not later than twelve months from the date upon which
237 the obligor receives notification of (i) the amount of such finding of
238 support due for periods of time prior to the action, and (ii) the right
239 not later than twelve months from the date of receipt of such
240 notification to present evidence as to such obligor's past ability to pay
241 support for such periods of time prior to the action. A copy of any
242 support order entered, subject to adjustment, shall state in plain
243 language the basis for the court's determination of past support, the
244 right to request an adjustment and to present information concerning
245 the obligor's past ability to pay, and the consequences of a failure to

246 request such adjustment.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2011</i>	46b-172a
Sec. 2	<i>October 1, 2011</i>	17b-179b
Sec. 3	<i>October 1, 2011</i>	17b-745(a)(5)
Sec. 4	<i>October 1, 2011</i>	46b-215(a)(7)

Statement of Purpose:

To permit a man to seek a court order for genetic testing to establish paternity when a reasonable possibility of paternity exists, and allow a court or family support magistrate to limit the accrual of child support obligations during any period when the mother of a child wilfully prevents the father of the child from learning of the birth of the child or seeing the child.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]